

## Assessment the effectiveness of international legal instruments in interpreting and developing the definition of genocide

Ocena skuteczności międzynarodowych instrumentów prawnych  
w interpretowaniu i rozwijaniu definicji ludobójstwa

Оценка эффективности международных правовых инструментов  
в толковании и разработке определения понятия геноцида

Оцінка ефективності міжнародно-правових інструментів  
у тлумаченні та вдосконаленні визначення геноциду

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**Summary:** The issues of the most serious national and international crimes committed in human history and the political and legal measures taken by states to prevent their commission, as well as the question of the justice system responsible for these acts have been discussed by countless authors. However, there has been no attempt to present a set of interdependent elements that make it possible to organise this topic.

The validity of the proposed research is based on the opinion that has been formulated after reviewing extensive documentation and supported by research already conducted, that the crime of genocide is usually committed by the ruling elite against the ruled, regardless of whether the ruling elite has the support of the majority of a given society. On the other hand, the authors of the article propose to examine the effectiveness of international legal instruments in the interpretation and development of the definition of genocide.

**Key words:** international crimes, genocide, war, international instruments, governance

**Streszczenie:** Kwestia najpoważniejszych zbrodni krajowych i międzynarodowych popełnionych w historii ludzkości, podejmowanych przez państwa działań o charakterze politycznym i prawnym w celu zapobieżenia ich popełnieniu oraz kwestia wymiaru sprawiedliwości odpowiedzialnego za te czyny była dyskutowana przez niezliczonych autorów, lecz nie podjęto próby przedstawienia zespołu współzależnych elementów, które pozwalają uporządkować tę tematykę.

Aktualność proponowanych badań opiera się na opinii, sformułowanej po zapoznaniu się z obszerną dokumentacją i popartej prowadzonymi już badaniami, że zbrodnia ludobójstwa jest zwykle popełniana przez elitę władzy przeciwko rządzonym, niezależnie od tego, czy rządzący mają poparcie większości danego społeczeństwa. Z drugiej strony, autorzy artykułu proponują zbadanie skuteczności międzynarodowych instrumentów prawnych w interpretacji i rozwoju definicji ludobójstwa.

**Słowa kluczowe:** zbrodnie międzynarodowe, ludobójstwo, wojna, instrumenty międzynarodowe, rządzenie

The article is based on a presentation given at a conference at the European Parliament: “The crime of genocide in international law and in the work of the European Parliament,” as part of the ECR project, on 7.06.2023.

**Резюме:** Вопрос о самых тяжких национальных и международных преступлениях, совершенных в истории человечества, о политических и правовых мерах, предпринимаемых государствами в целях предотвращения их совершения, и о системе правосудия, устанавливающей ответственность за эти деяния, обсуждался многочисленными авторами, однако до сих пор не было предпринято попытки представить совокупность взаимозависимых элементов для придания порядка в данной предметной области.

Обоснованность предлагаемого исследования базируется на мнении, сформулированном после изучения обширной документации и подкрепленном уже проведенными исследованиями, что преступление геноцида обычно совершается правящей элитой против управляемых, независимо от того, пользуются ли эти правители поддержкой большинства данного общества. С другой стороны, авторы статьи предлагают изучить эффективность международных правовых инструментов в толковании и разработке определения понятия геноцида.

**Ключевые слова:** международные преступления, геноцид, война, международные инструменты, правление

**Резюме:** Питання про найтяжчі національні та міжнародні злочини, скоєні в історії людства, політичні і правові заходи, вжиті державами для запобігання їх вчиненню, а також питання про систему правосуддя, відповідальну за ці діяння, обговорювалося незліченною кількістю авторів, але не було спроби представити сукупність взаємозалежних елементів, які б упорядкували цю тему.

Актуальність пропонованого дослідження ґрунтується на думці, сформульованій після вивчення великої кількості документації та підтверджень вже проведеними дослідженнями, що злочин геноциду, як правило, вчиняється правлячою елітою проти керованих, незалежно від того, чи мають ці правителі підтримку більшості суспільства, про яке йде мова. З іншого боку, автори статті пропонують дослідити ефективність міжнародно-правових інструментів у тлумаченні та вдосконаленні визначення геноциду.

**Ключові слова:** міжнародні злочини, геноцид, війна, міжнародні інструменти, управління

*War is not at just a man-to-man relationship, but a state-to-state relationship,  
in which private individuals are enemies only incidentally, never as men, never  
even as citizens, but only as soldiers*  
Jean Jacques Rousseau, *Le contract social*

## Introduction

Since their emergence as entities in their own right, States have been linked to each other, at first sporadically and incidentally, but gradually expanding over time to reach their present dimensions, which encompass all areas of social life. From the very beginning, these relations have taken two main forms – collaboration and struggle, confrontation.

Recently, criminal law has been extended to cover acts that are contrary to the international community, and this extension has been prompted by the experience of mankind in recent decades. In this period, it has gone through a series of major armed conflicts, or other trials, when the human being was denied belonging to

humanity. The international crimes were defined as acts contrary to international law and, moreover, so harmful to the interests protected by the law, that a rule was established in relations between States which made the criminal offences require or justify their repression by criminal law.

In the context of the above, the present study proposes to conduct comprehensive research on the conceptual evolution of genocide. Moreover, the main objective is to analyse the evolution of national and international legal instruments approaching this phenomenon. As a secondary objective, it is proposed to develop a detailed study on the normative enshrinement of genocide, and to assess the gaps that could lead to the ineffectiveness of existing regulations.

## 1. Methods and materials applied

To elucidate this institution as well as possible, the method of analytical research was mainly used. However, to fully complete the subject, the analytical method is not sufficient, so the practical aspect is studied from a historical-comparative point of view. In addition to comparative analysis, other methods were used such as analysis and synthesis of structural-systematic logic, history, legal-comparative, and other methods of scientific knowledge.

## 2. The United Nations' efforts towards better implementation of international instruments on genocide

The term *genocide* comes from the Greek *genos* meaning race and the Latin *cide* meaning to kill. History has recorded and continues to record numerous acts of physical, biological or cultural extermination carried out against human communities for various reasons throughout the world.<sup>1</sup>

The analysis of war crimes and crimes against humanity using an a priori algorithm requires an approach to the general concept of wrongful international acts. International crimes are acts contrary to international law, consisting of an act or omission to act, the essential element of which is the danger to international peace

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<sup>1</sup> O. Balan, V. Rusu, V. Nour, *Drept internațional umanitar (The International Humanitarian Law)*, Chisinau 2003, p. 297.

and security and to other supreme values of humanity, and which necessarily entail liability and the application of sanctions.<sup>2</sup>

In accordance to a doctrinal opinion, the crime of genocide constitutes a special category of war crimes, in this sense, due to the gravity of the facts that configure its objective side and the specific objective of those who commit it, i.e. the destruction and complete physical extermination of an ethnic or religious group, etc.<sup>3</sup>

Certainly, the crime of genocide is the most serious international crime among crimes against humanity. By analysing the ways in which it has been carried out over time, it has become clear that only by the joint efforts of States this scourge can be combated.

The United Nations (UN), through its principal and subsidiary bodies, has been working to achieve this goal by a wide-ranging campaign to adopt international instruments to ensure, as far as possible, the protection of human rights and fundamental freedoms.

In addition, the UN trains its structures to monitor the situation, to intervene when the situation in some regions is unstable and international involvement is required. The key point, however, is that laws exist everywhere, what really matters is that they are actually respected.

Genocide, according to the 1948 Genocide Convention, is the act of attacking members of a particular target group with the intent to destroy this target group 'as such'.<sup>4</sup> Meanwhile, a target group of genocide must constitute a stable group that can be described as a "national, ethnic, racial or religious group." The members of a political group cannot, therefore, be the target of genocide, though political affiliation may well overlap with such a group.

Although the title of the Convention on the Prevention and Punishment of the Crime of Genocide<sup>5</sup> indicates that its main purpose is both to combat and punish the commission of acts constituting the objective side of this crime, a study of the substance of the provisions of this instrument shows that greater emphasis is placed on the objective of prevention. Undoubtedly, the punishment of a crime is organically linked to its prevention, since the defensive function of criminal law requires

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<sup>2</sup> St.-V. Bădescu, *Umanizarea dreptului umanitar (The Humanity of Humanitarian Law)*, Bucharest 2007, p. 291.

<sup>3</sup> Cauia A., *Drept internațional umanitar (The International Humanitarian Law)*, Chisinau 2020, p. 294.

<sup>4</sup> Convention on the Prevention and Punishment of the Crime of Genocide, adopted by the General Assembly of the United Nations on 9 December 1948. The term 'as such' conveys the special intent (*dolus specialis*) requirement of the crime.

<sup>5</sup> [https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.1\\_Convention%20on%20the%20Prevention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide.pdf](https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.1_Convention%20on%20the%20Prevention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide.pdf) [access: 12.07.2023].

that the detection and appropriate and prompt punishment of a crime contributes to preventing its future commission.

The 1948 Genocide Convention is, of course, not the only lens through which genocidal violence can be understood.<sup>6</sup> Dirk Moses has observed that the Convention can play a role in “depoliticising” how genocidal violence is spoken about and understood.<sup>7</sup> The central question for students of genocide must be to understand why such violence occurs. Genocide, as argued by Helen Fein, is committed to achieve political goals,<sup>8</sup> while Martin Shaw proposes that genocide is best understood as a “form of war” implemented to destroy “the power of an enemy social group.”<sup>9</sup> Focusing purely on proving whether or not a particular case of genocidal violence meets the stringent definitional requirements of the Convention can limit this discussion to a narrow semantics-based debate.<sup>10</sup>

Moreover, the criminalisation of related acts such as complicity in genocide, attempted genocide and, last but not least, public and direct incitement to genocide implies a clear preventive dimension, which is sufficiently imposing, even if the specialists who contributed to the drafting of the Convention decided to exclude from the text of this section acts such as hate speech or racist organisations.

An important role in preventing the crime of genocide has been given to the UN bodies. While opinions have emerged that only the General Assembly and the Security Council have the competence to become involved in situations of suspected genocide, it would be wrong to ignore other bodies, such as the Economic and Social Council (ECOSOC), particularly given the work of the Commission on Human Rights and the Sub-Commission on the Promotion and Protection of Human Rights. The UN’s involvement during the genocide in Rwanda was not only through its main bodies (General Assembly, Security Council, ECOSOC, etc.), but also through its subsidiary bodies.

Referring to the undeniable importance of the General Assembly in shaping the concept of genocide, it should be noted that the starting point is the adoption of the Convention on the Prevention and Punishment of the Crime of Genocide.<sup>11</sup>

<sup>6</sup> J. Melvin, *Mechanics of Mass Murder: A Case for Understanding the Indonesian Killings as Genocide*, *Journal of Genocide Research* 2017, vol. 19, no. 4.

<sup>7</sup> A.D. Moses, *The Problems of Genocide*, Cambridge 2021.

<sup>8</sup> H. Fein, *Revolutionary and Antirevolutionary Genocides: A Comparison of State Murders in Democratic Kampuchea, 1975 to 1979, and in Indonesia, 1965 to 1966*, *Comparative Studies in Society and History* 1993, vol. 35, no. 4, p. 801.

<sup>9</sup> M. Shaw, *War and Genocide: Organised Killing in Modern Society*, Oxford 2003, pp. 44–45.

<sup>10</sup> J. Melvin, *Mechanics of Mass Murder...*

<sup>11</sup> Approved and proposed for signature and ratification or accession by General Assembly resolution 260 A (III) of 9 December 1948. Entry into force: 12 January 1951, in accordance with article XIII,

Subsequently, the General Assembly developed the concept by adopting a series of resolutions.

Accordingly, referring to the situation in the former Yugoslavia, the General Assembly cited the Convention on the Prevention and Punishment of the Crime of Genocide, drawing a parallel between genocide and ethnic cleansing. The merit of the General Assembly in this context lies in determining to what extent ethnic cleansing remains a crime against humanity and when it can be treated as a form of genocide.

Furthermore, a series of resolutions were adopted by the General Assembly condemning the acts of genocide that took place in 1994 on the territory of Rwanda.<sup>12</sup>

In 1996, a significant step forward was taken by recognising, in certain circumstances, rape and sexual violence as a way of committing genocide. In 1997, the General Assembly, in its resolution on human rights in Cambodia, expressed its “willingness of the United Nations to assist in efforts to investigate the tragic events in Cambodia, including holding accountable those responsible for international crimes such as genocide and crimes against humanity.”<sup>13</sup>

The following is a highlight of the General Assembly’s subsidiary body – the International Law Commission, which studied a huge amount of material on the concept of genocide, particularly at the stage of drafting the Code of Crimes against the Peace and Security of Mankind.

In 1954, the Commission concluded that the definition accepted by the above-mentioned Convention should be amended, particularly with regard to the acts forming the objective side of the crime, suggesting that the list should be illustrative rather than exhaustive. However, the Commission subsequently changed its mind and opted for the original text of the Convention, stressing the need to comply with a text widely accepted by the international community and the States Parties which participated in the drafting of the document.

In this context, the important role of the UN Security Council in shaping and developing the concept of genocide should also be emphasised. The Security Council’s first contribution to the prevention and punishment of the crime of genocide dates back to 1992, when it intervened in the conflict in Bosnia and Herzegovina. Although the Commission of Experts was set up by the Council, it did not have an

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[https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.1\\_Convention%20on%20the%20Prevention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide.pdf](https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.1_Convention%20on%20the%20Prevention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide.pdf) [access: 12.07.2023].

<sup>12</sup> Resolution adopted by the General Assembly on 23 December 2003, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N03/508/56/PDF/N0350856.pdf?OpenElement> [access: 12.07.2023].

<sup>13</sup> W.A. Schabas, *Genocide in International Law*, Cambridge 2000, p. 457.

express mandate to investigate the crime of genocide, its members considered it to be beyond any doubt within their remit to investigate the events that had taken place on the territory of the former Yugoslavia. The conclusions of the Commission of Experts formed the basis for the decision to set up an ad hoc tribunal to examine the events that took place and to judge those responsible. Although the resolution of 8 May 1993 establishing the International Criminal Tribunal for the former Yugoslavia omitted the use of the reference to genocide, the Tribunal's statute nevertheless recognised the crime of genocide as falling within its jurisdiction.

The Security Council used the term "genocide" to define the peak of the crisis in Rwanda, and this only after whole sessions of debate. The Council considered it imperative to recognise the events which began to unfold in Rwanda in April 1994 as acts of genocide on a wider scale, since their recognition as such would prompt international structures and Member States which have ratified the Convention<sup>14</sup> not only to take a stand but also to act to repress this scourge. Consequently, the number of victims had risen to hundreds of thousands, the Council authorised the deployment of an assistance mission of 5,500 soldiers under the aegis of the UN. According to the data, proposals for assistance came from the USA, Ethiopia, Nigeria, Zambia, Zimbabwe, etc. But the debates continued, which seems strange to say the least: while thousands of Tutsi were being massacred in Rwanda every day, UN members were discussing how to define the theoretical term 'genocide' more accurately and how to adopt a strategic military tactic. Finally, in May 1994, a resolution authorised the intervention of the assistance mission for Rwanda.

However, the preamble to the resolution, while borrowing the definition of genocide stipulated in the Convention, omitted to use the term expressly, stating that "the killing of members of an ethnic group with intent to destroy that group, in whole or in part, constitutes a crime under international law." Subsequent reports have stated that "beyond any doubt, the events unfolded in Rwanda amount to the crime of genocide, as they are marked by large-scale killings of ethnically identified communities and families."

Following these reports, the Security Council established the International Criminal Tribunal for Rwanda on 8 November 1994. Unlike the resolution establishing the International Criminal Tribunal for the former Yugoslavia, in the case of Rwanda, it (the resolution) expressly mentioned "the deep concern caused by the findings of the experts that acts of genocide and other serious violations of

<sup>14</sup> Convention on the Prevention and Punishment of the Crime of Genocide, 9 December 1948, United Nations, Treaty Series, vol. 78, p. 277. Adopted in Republic of Moldova on 26 April 1993, [https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.1\\_Convention%20on%20the%20Prevention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide.pdf](https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.1_Convention%20on%20the%20Prevention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide.pdf) [access: 12.07.2023].



international humanitarian law have occurred in Rwanda.” The Tribunal also gave itself the prerogative of sentencing the persons responsible for the above violations.

A major contribution in the area of concern with the definition of genocide is recognised in the work of the Economic and Social Council, particularly through its subsidiary bodies. The great merit of the Economic and Social Council in ordering the preparation of a report on the crime of genocide should be emphasised. The Sub-Commission on the Promotion and Protection of Human Rights has been entrusted with this task, specifically, the representative of the United Kingdom of Great Britain and Northern Ireland, Benjamin Whitaker. After a long period of study and research, the report was presented to and accepted by the Sub-Commission in 1985. The report addressed the controversial issue of the Armenian genocide, concluding that the genocide had taken place, based on military tactics, eyewitness testimony and archived official records. B. Whitaker’s report was also marked by the formulation of a number of groundbreaking but controversial conclusions. For example, the expert proposed a number of amendments to the Convention, such as the inclusion of political groups, groups identified by sexual orientation within the scope of potential victims of the crime of genocide, the exclusion of responsibility for the execution of superior orders, the extension of the scope of the Convention to cultural genocide, ethnocide and ecocide, amendments which, although they did not lead to a revision of the *Convention*, cannot be denied their high theoretical value.<sup>15</sup>

Research into incitement to hatred and genocide through the media, carried out in 1995, is another merit of the Sub-Commission’s investigation. The resolution took as its point of reference the case of “Radio Democratie – La Voix du Peuple,” broadcasting in Uvira – a region of Zaire (now Congo), a radio station found responsible for inciting hatred and provoking genocide. Referring to both the Convention on the Elimination of All Forms of Racial Discrimination<sup>16</sup> and the Convention on the Prevention and Punishment of the Crime of Genocide,<sup>17</sup> the Sub-Commission ordered the authorities of *Zaire* – a State Party to

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<sup>15</sup> B. Whitaker, *Revised and Updated Report on the Question of the Prevention and Punishment of the Crime of Genocide*, <http://preventgenocide.org/prevent/UNdocs/whitaker> [access: 12.07.2023].

<sup>16</sup> International Convention on the Elimination of All Forms of Racial Discrimination adopted on 21 December 1965. Adopted in Republic of Moldova on 25 February 1993, <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-elimination-all-forms-racial> [access: 12.07.2023].

<sup>17</sup> Approved and proposed for signature and ratification or accession by General Assembly resolution 260 A (III) of 9 December 1948. Entry into force: 12 January 1951, in accordance with Article XIII, [https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.1\\_Convention%20](https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.1_Convention%20)



the above-mentioned instruments – to take steps to close down the radio station, investigate the situation, collect evidence, and bring the guilty parties before a competent court.

By another resolution in 1995, the Sub-Commission also concluded that “a veritable genocide was committed on a massive, widespread and systematic scale against the civilian population of Bosnia and Herzegovina, often in the presence of the *United Nations forces*.”<sup>18</sup> The Human Rights Commission continued its investigations by adopting a series of resolutions on genocide. Thus, in the 1992 resolution, referring to the situation in the former Yugoslavia, the Commission strongly condemned the concept and practice of ethnic cleansing. Although the Commission omitted to use the term ‘genocide’ expressly, it is clear that this is what it meant, based on a contextual interpretation of the preamble to the resolution: “the destruction of national, ethnic, racial or religious groups,” a phrase clearly transcribed from Article 2 of the Convention.

The Commission also became involved in May 1994 at the request of Canada, which asked the Commission to comment on the genocide in Rwanda. An expert, Rene Degni-Segui, was immediately appointed and, after visiting Rwanda, presented his report with the relevant conclusions on the events in that country: “From the definition of the crime of genocide set out in Article 2 of the Convention, it follows that this crime has three constituent elements: it constitutes a criminal act, it is committed with intent to destroy, in whole or in part, a particular group identified as such. While the first condition is not in doubt, given the fact that the massacres were committed and the perpetrators were subjected to cruel, inhuman and degrading treatment, the second condition was even more difficult to establish, given the clear and unequivocal intention resulting from the continuous incitement to killings, launched through the media (in particular radio, television, manifestos). But even in their absence, the intention could be deduced from numerous conclusive facts: preparatory acts of massacres through the distribution of firearms, the training of soldiers, the large number of Tutsi victims. The third condition linking the destruction to the determination of the victim’s membership of a particular group, without any other objective and a reason being established, is only apparently and not really problematic, given that the persons were victimised on the basis

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on%20the%20Prevention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide.pdf [access: 12.07.2023].

<sup>18</sup> Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), <https://www.icj-cij.org/case/91> [access: 12.07.2023].

of selection by Hutu members.” Thus, the expert concluded, the crime of genocide took place in Rwanda.<sup>19</sup>

The Commission’s intention to enhance the preventive role of the Convention by creating an early warning and intervention system in regions where the political situation is identified as “unstable and volatile” is particularly valuable.

The work of the UN bodies is undoubtedly of colossal importance in defining and punishing the crime of genocide, but the following reference will be made to other ways which, although not reflected in the wording of the Convention, cannot be ignored.

Thus, in one of the drafts of the Convention, it was stated: “Any form of public propaganda which tends, by its systematic and deeply hostile character, to promote genocide or to treat its outbreak as a necessity, or as a legitimate or excusable act, shall be punished.” In support of this formulation, it has been argued that this type of propaganda differs in character and resonance from public incitement to genocide (which is treated as a distinct form of the crime in question) in that the author of the propaganda does not simply incite to commit genocide but, if successful, convinces the audience by instilling hatred and enmity in people’s consciousness that genocide is objectively necessary, the only solution in the specific case. From this point of view, such propaganda is even more dangerous than incitement to genocide, precisely because of its profound implications for the consciousness of the masses. Moreover, genocide can only take place, if a certain state of mind, a psychological element that can mobilise the perpetrator to commit the crime of genocide, has previously occurred. The representative of the United States of America argued against this wording, citing the right to free expression, which can only be limited, if there is a real and imminent danger of violation of other rights and freedoms. Following the same idea, the condition of real and imminent danger would be met only in the case of incitement, which is already criminalised, whereas propaganda is too abstract. However, the wording in question was also supported, particularly by the USSR, which warned that propaganda of enmity, if not stopped in time, would degenerate into incitement to racial, national or religious hatred, which is essentially a prerequisite for the crime of genocide.

However, despite all the pros, hate speech remained outside the Convention because of its abstract and hard-to-define nature. It was considered that any hostile statement targeting a particular human group could be grounds for prosecution

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<sup>19</sup> Report on the situation of human rights in Rwanda / submitted by René Degni-Ségui, Special Rapporteur of the Commission on Human Rights, under paragraph 20 of resolution S-3/1 of 25 May 1994, <https://digitallibrary.un.org/record/228462> [access: 12.07.2023].

for committing a form of the crime of genocide. This would considerably limit the freedom of the press and the right of citizens to information. In addition, during armed conflicts, campaigns to support and raise the morale of the participants in the fighting by discrediting the enemy take place, the aim of these campaigns being to mobilise forces to weaken the enemy and not to propagate the crime of genocide. Last but not the least, this provision could be used as a pretext to justify abuses by governments that do not tolerate criticism, particularly from the press.

The Convention's shortcoming regarding the illegality of hate speech has been filled by other international instruments in the field of human rights protection. For example, Article 7 of the Universal Declaration of Human Rights (UDHR) states: "All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination."<sup>20</sup> Also Article 29 (2) refers to the exceptional situations in which fundamental rights guaranteed by the UDHR may be restricted: "In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society."

The International Convention on the Elimination of All Forms of Racial Discrimination,<sup>21</sup> adopted in 1965, in Article 4 expressly prohibits any propaganda to promote hatred, reads as follows: "States Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination and, to this end, with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in Article 5 of this Convention, inter alia:

- (a) Shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of

<sup>20</sup> Declaration was proclaimed by the United Nations General Assembly in Paris on 10 December 1948 (General Assembly resolution 217 A), <https://www.un.org/en/about-us/universal-declaration-of-human-rights> [access: 12.07.2023].

<sup>21</sup> Adopted on 21 December 1965 by UN General Assembly resolution 2106 (XX), <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-elimination-all-forms-racial> [access: 12.07.2023].

- another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof;
- (b) Shall declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offence punishable by law;
- (c) Shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination.”

The International Convention on the Elimination of All Forms of Racial Discrimination has been ratified by more than 150 States. Moreover, these States are subject to a monitoring mechanism in that they are obliged to submit regular reports to the Committee on the Elimination of Racial Discrimination.<sup>22</sup>

## Conclusion

In this context we can deduce the main ideas:

- Genocide is the intentional act committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group, namely: the killing of members of the group; serious injury to the physical or mental integrity of members of the group; the intentional subjection of members of the group to conditions of life calculated to bring about their physical destruction in whole or in part; measures aimed at reducing the birth rate within the group; the forcible transfer of children belonging to another group.
- In the context of international crimes, genocide, because of the values it protects and the involvement of the State as organiser, is an international crime.
- Crimes against humanity, and by implication genocide – as the most serious of these categories of crimes, are more serious than war crimes.
- The Draft Code of Crimes against Peace and Security of Mankind makes it clear that crimes against humanity are more serious than war crimes because of the presence of specific elements (systematic and widespread commission of the acts and awareness of the nature of the acts in question) – which are regarded as aggravating factors.

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<sup>22</sup> The Universal Declaration of Human Rights adopted on 10 December 1948. Adopted in Republic of Moldova on 28 July 1990, <https://www.un.org/sites/un2.un.org/files/2021/03/udhr.pdf> [access: 12.07.2023].

- The difference in the gravity of the two categories of crimes is also reflected in the provisions of some national laws, which stipulate more severe penalties for crimes against humanity than for war crimes.
- The Rome Statute contains at least three provisions (possibility of self-defence, execution of superior's order and jurisdiction), the analysis of which shows that crimes against humanity and crimes of genocide are more serious than war crimes. A similar view has been taken by the International Criminal Tribunals for the former Yugoslavia and Rwanda.
- Criminal conduct classified as a crime against humanity attracts punishment according to the degree of danger it presents, whereas the same act (with the same material element) classified as a war crime will attract a similar punishment only if aggravating circumstances are found to exist.
- Due to its specific purpose (to destroy all or part of a particular group), genocide has been separated from crimes against humanity as an aggravated case of the latter.
- The principle of non-applicability of the statute of limitations to crimes against the peace and security of mankind, as well as war crimes, reflected in the legislation of the Republic of Moldova, needs to be brought into line with the provisions of the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, by excluding the phrase or other crimes provided for in international treaties, to which the Republic of Moldova is a party, from Article 60 (8) and the phrase provided for in Articles 135 to 137, 139, 143 and Article 97 (4).
- With regard to the distinction between the crime of genocide and other similar criminal acts, we deduce that, on the basis of the specific purpose, which is a qualifying sign of genocide, this component is different from the so-called cultural genocide, ethnic cleansing, ecocide, apartheid, biocide – acts that remain criminally punishable under the rules of crimes against humanity or war crimes.
- The UN, through its competent bodies, has helped to develop the concept of genocide, to establish its legal framework and to close a number of gaps by adopting a series of international conventions. By setting up commissions, it tries to ensure monitoring in regions with unstable situations.

The fundamental goal of humanity is to eliminate war from future human history. Until then, no effort must be spared to make war less violent, easing the plight of those who become its victims. Of course, it happens that the best rules are not followed. It is certainly not the fault of those who drafted them. In no legal system are violations treated as evidence that the rules broken were not necessary. On the contrary, human imperfection makes the rule necessary. For a rule to be found to

be violated, such rule must first exist. In the current stage of development of the law of armed conflict, which is constantly extending its reach, it is not the rules that are lacking, but the will to respect them.

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